

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA
4

5 UNITED STATES OF AMERICA,) 3:93-cr-00035-HDM-1
6 Plaintiff,)
7 vs.) ORDER
8 MARK MURRAY,)
9 Defendant.)
10

11 Defendant filed a successive 28 U.S.C. § 2255 motion to
12 vacate, set aside, or correct his sentence contending that his
13 sentence should be vacated because the federal carjacking offense
14 which served as a predicate for his 18 U.S.C. § 924(c) conviction
15 no longer qualifies as a "crime of violence" in light of *Johnson v.*
16 *United States*, 135 S.Ct. 2551 (2015) (ECF No. 77). This court
17 denied defendant's motion on February 12, 2018 (ECF No. 88) based
18 on the Ninth Circuit Court of Appeals' decision in *United States v.*
19 *Gutierrez*, 876 F.3d 1254, 1257 (2017) wherein the court held that
20 "the federal offense of carjacking is categorically a crime of
21 violence under § 924(c)." Defendant requests that this court issue
22 a certificate of appealability.

23 The standard for issuance of a certificate of appealability
24 calls for a "substantial showing of the denial of a constitutional
25 right." 28 U.S.C. § 2253(c). The Supreme Court has interpreted 28
26 U.S.C. § 2253(c) as follows: "Where a district court has rejected
27 the constitutional claims on the merits, the showing required to
28 satisfy § 2253(c) is straightforward: The petitioner must


1 demonstrate that reasonable jurists would find the district court's
2 assessment of the constitutional claims debatable or wrong." *Slack*
3 *v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*, 221
4 F.3d 1074, 1077-79 (9th Cir. 2000). The Supreme Court further
5 illuminated the standard for issuance of a certificate of
6 appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The
7 Court stated in that case:

8 We do not require petitioner to prove, before the
9 issuance of a COA, that some jurists would grant the
10 petition for habeas corpus. Indeed, a claim can be
11 debatable even though every jurist of reason might
12 agree, after the COA has been granted and the case
13 has received full consideration, that petitioner
14 will not prevail. As we stated in *Slack*, "[w]here a
15 district court has rejected the constitutional
16 claims on the merits, the showing required to
17 satisfy § 2253(c) is straightforward: The petitioner
18 must demonstrate that reasonable jurists would find
19 the district court's assessment of the
20 constitutional claims debatable or wrong."

21 *Miller-El*, 123 S.Ct. at 1040 (quoting *Slack*, 529 U.S. at 484).

22 The court has considered the issues raised by defendant, with
23 respect to whether they satisfy the standard for issuance of a
24 certificate of appeal, and the court determines that none meet that
25 standard. The court therefore denies a certificate of
26 appealability in this case.

27 DATED: This 13th day of February, 2018.

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UNITED STATES DISTRICT JUDGE